

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

J.C.D., INC. t/a J.L. TERREL'S)
and)
TERREL'S PRO FINISHES, INC.,) Civil Action No. 02-CV-2645
Plaintiffs)
v.) Judge Surrick
SHERWIN-WILLIAMS AUTOMOTIVE)
FINISHES CORP.,)
Defendant.)

DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, defendant Sherwin-Williams Automotive Finishes Corp. moves the Court to dismiss the Amended Complaint. In support of its motion, Sherwin-Williams submits the accompanying brief and states:

1. Plaintiffs J.C.D., Inc. and Terrel's Pro Finishes, Inc. (together, "Pro Finishes"), in the second iteration of their complaint in this action, attempt to state six claims for relief against Sherwin-Williams. The claims arise from the termination of a Direct Jobber Agreement. That agreement authorized Pro Finishes to market auto-body paint distributed by Sherwin-Williams.

2. Pro Finishes complains that, after it stopped paying Sherwin-Williams for paint, Sherwin-Williams terminated the Jobber Agreement and sold paint directly to Pro Finishes' customers.

3. The Jobber Agreement, however, authorizes both parties to terminate the agreement without cause at any time on 30-days notice. *See* Jobber Agreement ¶ 5.1 (Compl.,

Ex. A). The Jobber Agreement also authorizes Sherwin-Williams to sell products directly to Pro Finishes' customers. *Id.* ¶ 4.2.

4. Because the Jobber Agreement authorizes the conduct about which Pro Finishes now complains, the Amended Complaint, like its predecessor, fails to state a claim for relief.

For these reasons and those set out in the accompanying brief, Sherwin-Williams respectfully requests that this Court dismiss the Amended Complaint. A proposed order is attached.

Respectfully submitted,

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ORDER

AND NOW, this _____ day of _____, 2002, upon consideration of Defendant's Motion to Dismiss and Plaintiffs' opposition thereto, if any, it is hereby ORDERED that Defendant's Motion is GRANTED. Plaintiffs' Amended Complaint is DISMISSED with prejudice and judgment is entered for Defendant Sherwin-Williams Automotive Finishes Corp.

_____, J.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Defendant's Motion to Dismiss Amended Complaint was served this _____ day of February, 2003, via First Class U.S. Mail, upon counsel of record for Plaintiffs, as follows:

John G. Bravacos, Esq.
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One of the Attorneys for Defendant
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